

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. INU-01-1
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**ORDER DENYING REQUEST FOR CONTINUANCE
AND FOR AMENDMENT OF PROCEDURAL SCHEDULE**

(Issued November 8, 2001)

On August 9, 2001, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a petition for determination of effective competition and deregulation pursuant to Iowa Code § 476.1D (2001). Iowa Telecom asks the Utilities Board (Board) to determine that its existing retail local exchange service in the exchanges of Armstrong, Bennett, Coon Rapids, Delmar, Forest City, Lowden, Manning, and Oxford Junction are subject to effective competition and should be deregulated. If the Board grants that request and deregulates Iowa Telecom's retail local exchange services in the identified exchanges, Iowa Telecom requests a determination by the Board that a deregulation accounting plan is not required of Iowa Telecom because its rates are presently regulated pursuant to a price regulation plan under Iowa Code § 476.97.

On September 18, 2001, the Board issued an order pursuant to 199 IAC 5.3(1) initiating a formal notice and comment proceeding, identified as Docket No. INU-01-1,

to determine whether all retail local exchange services offered within the identified exchanges are subject to effective competition and should be deregulated. As a part of that order, the Board established a procedural schedule for this matter.

On October 22, 2001, Coon Rapids Municipal Utilities and Manning Municipal Communication and Television System Utility (the Municipals) filed a request for continuance of the oral presentation in this matter and for amendment of the procedural schedule. The Municipals note that the Board currently has a vacancy among its members and argue that the deregulation questions raised in this proceeding “are such as to mandate consideration by a complete board.” They also argue that the “interests of due process require that the decision in this case be rendered by a full board.”

On October 24, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response concurring in the Municipals’ request. Consumer Advocate also points out that extension of the entire procedural schedule will permit all parties a better opportunity to gather information and submit a comprehensive record for the Board to consider.

On October 25, 2001, the Iowa Association of Municipal Utilities joined in the Municipals’ request, also stating that the public interest requires “a true and full disclosure of all material facts.”

On November 5, 2001, Iowa Telecom filed a response opposing the Municipals’ request. Iowa Telecom argues that the two current members of the

Board are sufficient to render a decision in this matter that is just and in the public interest. Iowa Telecom further notes that a majority of the Board constitutes a quorum for transaction of the Board's business, pursuant to Iowa Code § 474.4, and that two members constitute a majority of the Board and, therefore, a quorum. Iowa Telecom also argues that granting continuances based upon a Board vacancy would not be good public policy, as Board member absences and vacancies can occur at any time and may last for unknown periods of time, but the business of the Board must continue.

Finally, Iowa Telecom argues that there is no way of knowing when the Governor will appoint a replacement to the Board, so the Board may still have only two members on any future date chosen for the oral presentation. Iowa Telecom argues that the "business of the Board cannot come to a halt pending the appointment of a third member."

The Board will deny the motion for amendment of the procedural schedule. Iowa Code § 474.4 explicitly provides that a majority of the Board shall constitute a quorum for the transaction of business, so action taken by two Board members is as valid as action taken by three. For this reason, the Board also rejects the Municipals' contention that there may be some due process right to a hearing before three Board members.

IT IS THEREFORE ORDERED:

The request for continuance of the oral presentation in this matter and for amendment of the procedural schedule filed on October 22, 2001, by Coon Rapids Municipal Utilities and Manning Municipal Communication and Television System Utility is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of November, 2001.